

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
CONSUMERS ENERGY COMPANY)	
for authority to increase its rates for the generation)	Case No. U-17087
and distribution of electricity and for other relief.)	
_____)	

At the July 12, 2017 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

ORDER

On September 19, 2012, Consumers Energy Company (Consumers) filed an application requesting a \$148.3 million rate increase and other relief.

A prehearing conference was held before Administrative Law Judge Mark E. Cummins (ALJ) on October 19, 2012. At the prehearing conference, the ALJ granted a petition to intervene filed by (among many others) the Michigan Department of the Attorney General (Attorney General). The Commission Staff (Staff) also participated. On May 7, 2013, the parties filed a settlement agreement resolving most of the issues in the case.

On May 15, 2013, the Commission issued an order approving the settlement agreement. The settlement resolved all issues with the exception of certain issues concerning Consumers' advanced metering infrastructure (AMI) program, including the amount of the fee associated with choosing to opt out of having a transmitting meter. *See*, Exhibit A to the May 15, 2013 order,

paragraph 5. The parties requested that the Commission address these issues based upon the initial and reply briefs.

Consumers proposed opt-out fees to be applied to customers requesting to retain a non-transmitting meter, and provided evidence showing that the fees were cost-based. The Staff recommended that the proposed monthly fee be reduced from \$11.12 to \$9.72, based on cost of service principles, and Consumers agreed.¹ On June 28, 2013, the Commission issued an order adopting tariffs (and associated credits) for the cost-based opt-out fees as proposed by Consumers and the Staff (June 28 order).

A coalition of customers (who were not parties to the rate case) known as Michelle Rison and the Residential Customer Group (together, the RCG) appealed the June 28 order, specifically the imposition and amount of the opt-out fee. On April 30, 2015, the Court of Appeals affirmed in part, reversed in part, and remanded the June 28 order for further proceedings. *Attorney General v Public Service Comm*, unpublished opinion per curiam of the Court of Appeals, issued April 30, 2015 (Docket Nos. 317434, 317456) (April 30 order), *rev'd in part*, 873 NW2d 108 (2016).² In the April 30 order, the court found:

In this case, the PSC's June 28, 2013, order approved tariff rates for customers who elected either to retain a standard meter or to replace a transmitting AMI meter with a standard meter. The approved rates were based on the PSC's determination of the actual costs associated with maintaining equipment and services for customers with

¹ In the September 11, 2012 order in Case No. U-17000, p. 5, the Commission required that any non-transmitting meter program must be based on cost of service principles.

² The Attorney General also appealed the June 28 order, specifically the Commission's approval of the AMI program. On January 27, 2016, the Michigan Supreme Court reversed the holding of the Court of Appeals on this issue and remanded the issue to that court. *In re Application of Consumers Energy*, 498 Mich 967; 873 NW2d 108 (2016). On July 5, 2016, the Court of Appeals held that the Commission could rely on the evidence presented to it, and the Commission's June 28 "order approving full deployment of Consumers' AMI program was supported by the requisite evidence, and was not unlawful or unreasonable." *In re Application of Consumers Energy*, 316 Mich App 231, 240; 891 NW2d 871 (2016).

non-transmitting meters. A decision to impose charges and expenses based on a utility's costs of operation is well within the ratemaking authority of the PSC. *Ford Motor Co*, 221 Mich App at 375. Accordingly, the PSC did not exceed its statutory authority.

Slip opinion, p. 5. Thus, the court found that the opt-out tariffs were based on the Commission's determination of the actual costs associated with the opt-out program, and that the imposition of tariffs based on the utility's costs of operation is lawful. *Id.*

Nevertheless, the court went on to state as follows:

Appellant customers argue that the PSC's approval of the tariffs requiring customers who opt-out of the AMI program to pay a one-time charge of either \$69.39 or \$123.91 and a monthly charge of \$9.72 was unjust, unreasonable, and unsupported by evidence in the record. At oral argument before this Court, the parties raised numerous arguments regarding whether the tariff amounts approved by the PSC represented the actual costs associated with continued use of analog meters, and whether any of these costs were already accounted for in the utility's rates. Unfortunately, it appears that these issues were given only cursory analysis in the PSC lower court record. We conclude that the record on this issue is inadequate to support an informed decision by the Court at this time. Accordingly, we remand this issue to the PSC to conduct a contested case hearing on this significant issue.³ The parties are entitled to present their positions, and the PSC shall issue a written opinion on its findings of fact and conclusions of law.

³ On remand, the PSC should clarify the purpose and nature of the opt-out tariff by addressing whether the tariff represents a reimbursement for costs of service, or whether the tariff constitutes something more akin to a tax, sanction, or penalty imposed upon customers who choose to opt out of the AMI program.

Slip opinion, pp. 5-6. Thus, the Court remanded the issues of whether the opt-out fee is cost-based and is duplicative of rates, and required a contested case hearing. The remand was not appealed.³

³ On July 22, 2015, the Court of Appeals denied the Commission's motion for reconsideration (Presiding Judge O'Connell dissented). On August 27, 2015, the Attorney General filed a motion to stay imposition of the opt-out fee until such time as the Commission may address the remand. On September 23, 2015, the Commission issued an order denying the motion on grounds that the Attorney General failed to satisfy the elements required under MCR 7.123(E)(3) for a stay. On October 23, 2015, the Attorney General filed a petition for rehearing of the September 23, 2015 order. On November 13, 2015, Consumers filed a response to the petition for rehearing. The

On January 19, 2016, the Commission issued an order inviting briefing on issues addressing the scope of the contested hearing mandated by the Court. Briefs were filed by Consumers, the Staff, the Attorney General, and the RCG.

On March 29, 2016, the Commission issued an order commencing this remand proceeding. The Commission found that the issues addressed in the proceeding shall be those articulated by the Court of Appeals, namely, the proceeding shall “clarify the purpose and nature of the opt-out tariff by addressing whether the tariff represents a reimbursement for costs of service, or whether the tariff constitutes something more akin to a tax, sanction, or penalty,” and “whether any of these costs were already accounted for in the utility’s rates.” April 30 order, pp. 5-6. The Commission directed that issues that do not fit within the scope of the remanded issues shall not be entertained. The Commission authorized use of the evidence provided in Case No. U-17735 (Consumers’ then-most-recent rate case), wherein these same issues were contested. The Commission also authorized the introduction of relevant new evidence that became available after June 17, 2015 (the date on which the record closed in Case No. U-17735).

A prehearing conference was held before the ALJ on May 3, 2016. Consumers, the Staff, the Attorney General, and the RCG participated in the prehearing. On October 5, 2016, an evidentiary hearing was held in which the testimony of five witnesses was bound into the record without cross examination. Timely initial and reply briefs were filed.

The ALJ issued a Proposal for Decision (PFD) on January 19, 2017. Exceptions were filed on February 3, 2017, by the RCG and the Attorney General. Replies to exceptions were filed on February 17, 2017, by Consumers and the Staff. The record consists of 166 pages of transcript and 14 exhibits admitted into evidence.

Commission finds that, in light of today’s order addressing the remand, the petition for rehearing is moot.

Evidentiary Issue

On September 22, 2016, Consumers and the Staff each filed a motion to strike portions of the testimony offered by the RCG, and two related exhibits. The evidence concerns alleged health, safety, and data privacy problems associated with the use of smart meters. On October 3, 2016, the RCG filed a single response in opposition to both motions. At the hearing on October 5, 2016, the ALJ granted both motions. 2 Tr 40.⁴ In its initial brief, the RCG appealed the ALJ's ruling, arguing that the evidence is relevant because the costs arising from the AMI program include the health, safety, and privacy issues addressed in the stricken testimony.

In the PFD, the ALJ concludes that the evidence was properly stricken because it “clearly falls outside the scope of this remand proceeding as expressly defined by both the Court of Appeals and the Commission.” PFD, p. 22. The ALJ notes that the Commission affirmed the ALJ's decision in Case No. U-17735 (Consumers' 2015 rate case) to exclude evidence relating to health, safety, and privacy issues related to the implementation of AMI, because these issues have been addressed in other dockets. November 19, 2015 order in Case No. U-17735, pp. 114-132. *See*, September 11, 2012 order in Case No. U-17000; and the June 28 and October 17, 2013 orders in Case No. U-17102. The ALJ notes that the Court of Appeals also found that the health, safety, and privacy issues have been previously addressed by the Commission. *In re Application of Detroit Edison Company*, unpublished opinion per curiam of the Court of Appeals, issued February 19, 2015 (Docket Nos. 316728 and 316781) (February 19 order). The ALJ found that the RCG's attempt to relitigate these issues in this docket constitutes an improper collateral attack on these Commission orders and the Court of Appeals' decision. The ALJ recommends that the Commission affirm the decision to strike the evidence relating to health, safety, and privacy issues.

⁴ Due to the remand, there are two transcripts in this docket labeled Volume 2. All citations in this order are to the Volume 2 associated with the remand, filed on October 13, 2016.

The RCG takes exception, arguing that, in remanding the AMI tariff issues, the court clearly intended to direct the parties to litigate the nature and purpose of AMI. The RCG contends that the Commission's orders in Case No. U-17102 were unlawful, and that the court's February 19 order does not address the privacy issue. The RCG relies on the dissent issued by Presiding Judge O'Connell with the July 22, 2015 order denying the Commission's motion for reconsideration; and accuses the Commission of circumventing the court's April 30 order in the March 29, 2016 order in this docket, by defining the remanded issues too narrowly.

In their replies, Consumers and the Staff both argue that the evidence addressing health, safety, and privacy issues is outside the scope of the remand as expressly defined by the Court of Appeals and the Commission.

The Commission adopts the findings and recommendations of the ALJ. In the March 29, 2016 order, p. 7, the Commission expressly rejected the RCG's request to expand the scope of the remand to include these issues. The ALJ's ruling is consistent with the November 19, 2015 order in Case No. U-17735, p. 135, where the Commission affirmed the ALJ's decision to strike testimony offered by the RCG on the issues of health, safety, and privacy as they relate to AMI; and also comports with the court's February 19 order, where the Court of Appeals held that issues related to health, safety, and privacy with respect to AMI had been previously addressed in Case No. U-17000. The Commission rejects the RCG's attempt to relitigate the approval of cost recovery for AMI, and notes that the Court of Appeals has ruled that the choice of metering technology in the provision of electric service is a utility management prerogative. February 19 order, p. 5. As the RCG knows, Judge O'Connell's opinion was a dissent, and as such carries no weight. The ALJ properly struck the irrelevant evidence, because it is outside of the scope of the court's remand, which speaks for itself.

The Remanded Issues Regarding Opt-Out Tariffs

Consistent with the Commission's decisions in this case and in Case No. U-17735, Consumers charges the following three opt-out fees: (1) a one-time charge of \$69.39 per meter if the customer opts out before a transmitting meter is installed; (2) a one-time charge of \$123.91 per meter if the customer opts out after the transmitting meter has been installed (thus requiring the meters to be switched back); and (3) a monthly charge of \$9.72. 2 Tr 50. The first two charges are referred to as the up-front charges, and are intended to address the costs associated with opting out of using standard metering equipment and thus pushing the installation of standard metering equipment into the future when the affected premises has a new resident or owner. The monthly charge recovers ongoing costs incurred to provide the opt-out program. 2 Tr 51.

The ALJ began with the issue of whether the opt-out tariffs provide recovery of the cost to provide this service, or whether they are a tax, sanction, or penalty. The ALJ found that the fees are cost-based, and arise from the customer's decision to opt out of the AMI program. The ALJ reviewed the evidence provided by Consumers in this case and in Case No. U-17735 describing how the up-front and monthly charges were calculated. The ALJ found that the up-front charges are "designed to collect the cost of ultimately installing a transmitting meter at a site from which a customer who elected to keep an analog meter had subsequently left (thus requiring the installation of a transmitting meter for use by the structure's next inhabitants), and the need to impose a higher upfront charge upon those who elected to switch from an existing smart meter back to an analog-based meter (which would, thus, require two meter installations)." PFD, p. 25; 2 Tr 51-52.⁵ The ALJ found that the up-front charges recover the cost of "(1) maintaining and testing an inventory of analog meters, (2) developing specific business processes, as well as associated systems,

⁵ Customers who elect to switch back actually receive a non-transmitting digital meter.

necessary to support the opt-out option, (3) providing the customer service support needed to enroll opt-out customers in the program, and (4) periodically replacing the handheld meters that the program would necessitate.” PFD, p. 25; 2 Tr 53. The ALJ further found that the monthly fee recovers the cost associated with retaining a sufficient number of meter readers, and the cost of meter testing and systems modifications required by the opt-out program.

The ALJ took note of the evidence provided by the Staff in this proceeding, which showed that the existing opt-out fees are cost-based and should be retained. 2 Tr 97-98, 107. The ALJ did not address Consumers’ request for increased opt-out fees in Case No. U-17990 (Consumers’ most recent electric rate case), because that issue is not relevant to the court’s remand. The ALJ concluded that the up-front and monthly opt-out fees are cost-based. PFD, pp. 24-27.

Turning to the court’s second remanded issue, the ALJ found that the amounts collected through the opt-out fees are not already included in base rates. The ALJ concluded that only customers who choose to opt out cause the utility to incur the program’s costs, and are charged with the program’s costs. The ALJ noted that the Commission approved two credits for these customers in Case Nos. U-17087 and U-17735, and the credits serve to remove from these customers’ rates the amount of meter reading expense already included in base rates, and the amount of costs associated with construction and implementation of the AMI system that are included in base rates. PFD, p. 28; 2 Tr 99-100. The ALJ found that opt-out customers are not paying twice for these services. PFD, pp. 28-29.

In exceptions, the RCG argues that the ALJ and the utility “rely improperly on a wholly speculative theory that the residential home of an opt-out customer invariably at some unknown time in the future would have a smart meter installed.” RCG’s exceptions, p. 7. The RCG contends that this is an “unreasonable theory” that has nothing to do with the test year being

examined in the case. The RCG further asserts that opt-out customers are already paying for all of the related cost categories listed by Consumers in base rates, and thus pay both the up-front and monthly opt-out charges twice. 2 Tr 119-121. The RCG notes that neither the Staff nor Consumers has provided a cost of service study (COSS) to support these tariffs or the credits, and argues that the evidence provided in Case No. U-17087 is stale at this point. The RCG objects to the basis for the costs as being estimates based on past experience, and argues that actual costs should be relied upon. 2 Tr 122.

The RCG further contends that opting out should not be considered a special service, but rather retaining an analog meter should be considered to be standard service. The RCG maintains that ratepayers, through Commission orders, are being “coerced” to connect with AMI. RCG’s exceptions, p. 10. The RCG argues that self-reads combined with enrollment in the budget payment plan provides “a regulatory alternative to CEC’s AMI opt-out tariffs.” RCG’s exceptions, p. 14. The RCG contends that Consumers has failed to provide competent, material, and substantial evidence to support its opt-out fees, that the fees are excessive, and that the “tariff represents, at the very least, a tax, and more likely a sanction or penalty.” *Id.*, p. 16.

In his exceptions, the Attorney General argues that the ALJ failed to consider any of the Attorney General’s evidence, which, he argues, showed that the tariffs are inappropriate, excessive, and punitive. 2 Tr 139-140. The Attorney General contends that customers who retain their meter should have no fee; customers who request replacement of an already-installed smart meter should have a fee of either \$48.63 or \$71.13; and the monthly fee should be \$9.89. 2 Tr 139-145. The Attorney General also asserts that opt-out customers are already paying for this customer service in base rates and thus paying twice. 2 Tr 148-153.

In reply, Consumers argues that it presented sufficient evidence describing each of the cost elements associated with the opt-out charges on the record in the remand, as well as on the original record in this case and in Case Nos. U-17735 and U-17990. 4 Tr 548-550, 557; 2 Tr 42-91; Exhibit A-72; and Exhibit A-1 (remand). Consumers maintains that the credit proposed by the Staff and agreed to by the utility in this case ensures that opt-out customers do not pay twice for meter reading costs and the costs of AMI implementation that are included in base rates, and notes that revenues received from these charges are treated as miscellaneous revenues in establishing base rates, which means that all customers receive the revenue benefits associated with the opt-out program. 2 Tr 67, 99. Consumers notes that the Commission has also previously rejected the RCG's argument regarding the use of self-reads as an alternative to the program. November 19, 2015 order in Case No. U-17735, pp. 127-130.

In reply to the Attorney General, Consumers argues that his exceptions contain little analysis of the positions taken by his own witness. Consumers maintains that the Attorney General is wrong when he argues that there is no incremental cost in providing a customer with the option to use non-standard equipment. 2 Tr 75-76. The charges are placed upon the customers who cause the costs to be incurred. Consumers contends that the Attorney General offers no new analysis or argument.

In its reply, the Staff argues that the up-front and monthly fees are a cost-based reimbursement and not a tax, sanction, or penalty. The Staff posits that a separate COSS is unnecessary "when a certain group [of] similarly situated customers within a rate class are causing specific, identifiable unique costs." Staff's replies to exceptions, p. 9. The Staff also notes that the choice of metering technology is a management prerogative, and that meters are utility property. February 19 order, p. 5; *Detroit Edison Co v Stenman*, 311 Mich App 367; 875 NW2d 767 (2015). The Staff

contends that no opt-out customer is paying for Consumers' investment and operations and maintenance costs associated with AMI, as a result of the credits for meter reading expense and the cost of the infrastructure. 2 Tr 99-100.

In reply to the Attorney General, the Staff argues that the utility's request for increased charges in Case No. U-17990 must be addressed in that case and not in this one.

The Commission begins by noting that the questions posed by the Court of Appeals in the April 30 order were answered in the June 28 order, pp. 3-9, wherein the Commission evaluated the evidence and arguments made by Consumers, the Staff, and the Attorney General, and adopted the cost-based fees proposed by Consumers, as modified by the Staff. The Court then affirmed the Commission's authority to do so by stating "The approved rates were based on the PSC's determination of the actual costs associated with maintaining equipment and services for customers with non-transmitting meters. A decision to impose charges and expenses based on a utility's costs of operation is well within the ratemaking authority of the PSC." April 30 order, p. 5. Nevertheless, the Court ordered a contested case on the enumerated issues, and that case has been held.

The Commission adopts the findings and recommendations of the ALJ on the remanded issues. The RCG and the Attorney General offer nothing new.

The opt-out tariffs are cost based. 2 Tr 97-101, 107; 4 Tr 548-550, 557; 7 Tr 1933-1934; Exhibit A-72. *See*, June 28 order, p. 9; November 19, 2015 order in Case No. U-17735, pp. 92-132. Costs associated with meter reading and AMI capital investment are built into base rates, so opt-out customers are provided with monthly credits in order to remove those costs from their rates. 7 Tr 1933-1934; 4 Tr 557; 2 Tr 50. The Commission found the tariffs set in this matter to be cost-based in each rate case, and has declined to approve increases requested by the utility.

November 19, 2015 order in Case No. U-17735, p. 128; February 28, 2017 order in Case No. U-17990, pp. 150-158.

Consumers explained the cost-of-service-based principles that it applied. 2 Tr 65-68. Opt-out fees represent incremental costs that are incurred solely in order to be able to offer the opt-out program; opt-out customers are protected by the credits from the costs of AMI, and customers who use standard equipment are protected from subsidizing customers who choose non-standard equipment. 2 Tr 99. The amounts collected from opt-out customers are credited to base rate calculations to ensure that there is no double recovery. 2 Tr 100. The Court of Appeals has found that smart meters are standard utility equipment, and that the choice of metering technology is a utility management prerogative. February 19 order, p. 5. The opt-out tariff collects costs associated with the development and operation of a non-standard metering option. 2 Tr 75-76. The Commission has previously rejected the RCG's argument regarding the use of self-reads as an alternative to the opt-out program. November 19, 2015 order in Case No. U-17735, pp. 127-128; February 28, 2017 order in Case No. U-17735, p. 158. The Commission has made it a priority to limit estimated and customer self-reading of meters in order to increase the accuracy of meter reading and billing. *See*, June 9, 2016 order in Case No. U-18002. Commission rules require utilities to read a certain percentage of electric meters. Mich Admin Code, R 460.724(d), 460.702(m); *see also*, Mich Admin Code, R 460.113, R 460.1608.

The Staff has consistently refuted the argument that a separate COSS is required for this program, and the Commission has previously rejected that argument. 2 Tr 65-68; November 19, 2015 order in Case No. U-17735, pp. 127-128. The Commission notes the following testimony provided on remand:

Costs are considered to be caused by a customer if they are incurred to serve that customer in a way that differs from other customers. In a cost of service study,

customers are grouped into classes of similarly situated customers (e.g., customers served at secondary voltage levels). The customers within these classes are considered to cause costs in a similar way. Sometimes, customers that would otherwise be considered similarly situated, but cause the company to incur specific costs differently from the other seemingly similarly situated customers, are not separated out into a different class (e.g., lighting customers with more expensive ornamental poles). In such a case, those costs which are incurred to serve a customer or group of customers differently are specifically assigned to those customers.

2 Tr 97-98. The Commission also notes the following testimony from the underlying case, which was adopted by the Commission in the June 28 order, p. 9:

Staff has reviewed the Company's proposal and determined that the Company's proposal is consistent with the September 11, 2012 Commission Order in Case No. U-17000 which required MPSC-regulated investor owned utilities to propose a cost based option for residential customers to permit them to choose a non-transmitting meter as opposed to the Company's standard transmitting AMI meter. However, Staff recommends that several adjustments be made to Consumers Energy's proposal. . . . Staff recommends that the monthly charge should be reduced from the Company proposed amount of \$11.12 to \$9.72. Staff has also modified the tariff to make it clear that the customer is choosing a non-transmitting meter as opposed to a transmitting meter, which is the Company's standard meter. . . . The Staff has reviewed the Company's cost estimates and determined that these estimates are based on the Company's experiences and past practices with meter reading and associated functions. Staff finds Consumers Energy's cost estimate to be reasonable, and the costs are consistent with other jurisdictions. However, Staff recommends that the monthly charge should be reduced to remove the costs associated with meter reading, AMI capital investment, and expenses that are included in the rates under which the customer is taking electric service. . . . Staff recommends that the monthly charge should be reduced to remove the meter reading costs that the customer is paying for under their current rate because the customer will now be paying for meter reading under the non-transmitting meter provision. If this adjustment is not made, the customer will be paying the Company twice for meter reading. . . . Staff recommends [the offset to AMI capital investment expenses] because the customers will not have a transmitting meter and therefore will not be utilizing the AMI infrastructure.

7 Tr 1933-1934. This testimony answers all of the remanded questions.

Miscellaneous Issues

Having addressed the issues that were remanded to the Commission, the ALJ went on to address seven additional issues that were presented by the parties “largely on the basis that it may assist the Commission in its future considerations of how to treat the issue of AMI opt-out charges,” but noted that the Commission may view these issues as outside the boundaries of this proceeding. PFD, p. 29.

First, the ALJ recommended rejection of the RCG’s claim that, because the AMI program will ultimately result in cost savings, therefore opt-out customers should pay no fees. The ALJ noted that the AMI program costs money to implement.

Second, the ALJ recommended rejection of the RCG’s claim that in the absence of a full cost of service study regarding the opt-out charges, no charge can be assessed. The ALJ took note of the Commission’s prior decisions rejecting this contention, where the Commission found that cost-of-service evidence had been provided by Consumers and by the Staff. June 28 order, p. 9; November 19, 2015 order in Case No. U-17735, pp. 127-128. The ALJ found this to be a settled issue.

Third, the ALJ recommended rejection of the RCG’s contention that there should be no fees for opt-out customers who self-read their meters and enroll in the budget payment plan, because otherwise these customers are paying twice for metering service, once through the fees and once through base rates. The ALJ noted his earlier finding regarding the credits to base rates, and the fact that these credits have been approved by the Commission. November 19, 2015 order in Case No. U-17735, pp. 127-130.

Fourth, the ALJ recommended rejection of the Attorney General’s argument that no up-front charge should be assessed to customers who retain their analog meter, and that only one charge for

a meter change should be assessed to customers who have a smart meter exchanged for an analog meter. The ALJ found that this proposal would unfairly result in the next customer in that premises being charged for the previous customer's choice to reject the smart meter. The Attorney General took exception to this finding, which is addressed above.

Fifth, the ALJ recommended rejection of the Attorney General's assertion that Consumers' fees are excessive in comparison to DTE Electric Company's (DTE Electric) fees, because evidence concerning a different utility is not relevant and does not provide a basis for decisions affecting another utility. The Attorney General took exception to this finding, which is addressed above.

Sixth, the ALJ recommended rejection of the Attorney General's proposal that any opt-out expenses be removed from the upfront charge and amortized over 15 years as a charge assessed to opt-out customers. The ALJ found that amortization could result in some customers paying more or less than others over time, and more or less than the system average, based on the length of time that they remain an opt-out customer. 2 Tr 78. The ALJ found that a system that assesses an equal up-front charge to all opt-out customers is the most equitable. The Attorney General, in his exceptions, asserts that the ALJ did not understand the Attorney General's argument, which simply was an explanation of the variation in fees between this case and Case No. U-17990.

Seventh, the ALJ recommended rejection of the Attorney General's proposal to lower the monthly fee based on evidence provided in Case No. U-17990. The ALJ found that this request will be addressed in the final order in Case No. U-17990 and falls outside the scope of this remand.

The Commission agrees with the ALJ's findings and recommendations on these issues. To the extent that they factor into the remanded issues, they are addressed above in the Commission's findings.

THEREFORE, IT IS ORDERED that, the Commission affirms the opt-out tariffs and related credits approved in the June 28, 2013 order in this matter.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel.

Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungpl@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Sally A. Talberg, Chairman

Norman J. Saari, Commissioner

Rachael A. Eubanks, Commissioner

By its action of July 12, 2017.

Kavita Kale, Executive Secretary